STATE OF MICHIGAN

COURT OF APPEALS

JOHNNIE CURRY,

Plaintiff-Appellant,

v

COURTNEY RITCHEY,

Defendant-Appellee.

UNPUBLISHED
May 12, 2005

No. 253019
Oakland Circuit Court
LC No. 2003-047318-NO

Before: O'Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this premises liability action. We affirm.

Plaintiff severed three of his fingers while operating an electric power saw at defendant's house. Plaintiff alleges that the saw jammed, whereupon defendant called out his name, causing him to become momentarily distracted and catch his fingers in the saw. The trial court concluded that the risk of harm caused by the saw was open and obvious and, therefore, granted defendant's motion for summary disposition.

We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Although the trial court did not specify under which subrule it was granting defendant's motion, it is apparent that the court looked beyond the pleadings, so the motion is properly reviewed under MCR 2.116(C)(10).

The record shows that the trial court viewed plaintiff as an invitee for purposes of resolving defendant's motion for summary disposition, but still concluded that defendant was entitled to judgment as a matter of law because the risk of harm from the power saw was open and obvious. Even if plaintiff was an invitee, the "open and obvious" doctrine states that a landowner does not ordinarily owe a duty to protect an invitee from known dangers. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). In this case, plaintiff admitted that he was familiar with power saws, generally, and the idiosyncrasies of the particular saw that jammed and caused his injuries. We agree with the trial court that the risk of harm posed by operating the power saw was known to plaintiff, so defendant did not owe him a duty to protect him from it.

Plaintiff's rejoinder is that the risk of harm was unreasonable, despite his knowledge of the danger, because defendant yelled out or called his name when the saw jammed, causing him to divert his attention from the saw. We disagree. The dangerous condition was the saw itself, and plaintiff admitted that he was aware of the risks posed by operating it. To the extent that plaintiff argues that defendant was actively negligent by distracting him, we agree with the trial court that her conduct cannot be considered a proximate cause of plaintiff's injuries. An evaluation of proximate cause "normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). While ordinarily a question of fact left to the jury, "if reasonable minds could not differ regarding the proximate cause of the plaintiff's injury, the court should decide the issue as a matter of law." *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002).

The trial court held that there was no genuine issue of material fact that the accident was caused by plaintiff running his hand against the saw blade. Although plaintiff claims that defendant momentarily distracted him, he owed a duty of care to himself to focus on his task and appreciate the immediate danger posed by the saw–even when faced with ordinary distractions. *Cavaliere v Adults for Kids*, 149 Mich App 756, 761; 386 NW2d 667 (1986). The palpability of plaintiff's duty translated into defendant's reasonable expectation that calling to plaintiff would not do any harm. *Id*. Under the circumstances, defendant's act of calling to plaintiff cannot be characterized as so unusual, unexpected, or unnatural that she should have anticipated that plaintiff would become so distracted that he would lose control of his hand and run it against the saw blade. *Id*. Therefore, it was not reasonably foreseeable that merely calling to plaintiff would create an unreasonable risk of harm, *id*. at 70, and plaintiff has failed to proffer any other facts that could substantiate a reasonable finding of proximate cause. *Nichols*, *supra*.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Michael J. Talbot